

**RECEIVED
CENTRAL FAX CENTER**

**FACSIMILE TRANSMISSION
TO THE UNITED STATES PATENT AND TRADEMARK OFFICE**

JAN 17 2005

(703) 872-9306

TO: EXAMINER: M. Lyons
EXAMINER'S TELEPHONE NUMBER: (571) 272-2420
ART UNIT: 877
SERIAL NO.: 09/989,654

FROM: Aaron Waxler
REGISTRATION NUMBER: 48,027

PHILIPS ELECTRONICS NORTH AMERICA CORPORATION
345 SCARBOROUGH ROAD
P.O. BOX 3001
BRIARCLIFF MANOR, NEW YORK 10510
TELEPHONE: (914) 333-9608

I certify that these documents consisting of 28 pages (including this cover sheet and an appeal brief filed in triplicate) is being transmitted via facsimile to the United States Patent and Trademark Office at the telephone number set forth above on January 17, 2005.



Fax Operator

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED
CENTRAL FAX CENTER

In re Application of

Atty. Docket

ROBERT F. HENDRIKS ET AL

NL 000630

Serial No.: 09/989,654

Art Unit: 2877

Filed: November 19, 2001

Examiner: M. LYONS

Title: INSPECTION OF SURFACES

JAN 17 2005

Commissioner for Patents
Alexandria, VA 22313-1450APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

Sir:

Appellants present their brief on appeal as follows:

REAL PARTY OF INTEREST

The real party of interest is the assignee, Koninklijke Philips Electronics N.V., and not the parties named in the above caption.

RELATED APPEALS AND INTERFERENCES

With regard to identifying by number and filing date all other appeals or interferences known to appellants which will directly effect or be directly affected by or have a bearing on the Boards' decision in this appeal, Appellants are not aware of any such appeals or interferences.

STATUS OF THE CLAIMS

Claims 1, 2, 9, and 10 stand rejected and are appealed and Claims 3-6 stand objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

STATUS OF AMENDMENTS

An amendment after final rejection was presented subsequent to the final rejection on October 11, 2004 which was considered not persuasive according to the October 28, 2004 Advisory Action.

SUMMARY OF THE INVENTION

The present invention is directed to a device for the inspection of surfaces with a laser light source (1) and a detector for detecting an intensity of light (13) that is reflected from the surface (10) to be inspected. The device also includes at least one mode filter (15) between the surface (10) and the detector (28).

THE ISSUES

- I. Whether under 35 U.S.C. § 102(b), the differences between the invention of Claims 1, 2, 9, and 10 and U.S. Patent 6,122,058 (Van Der Werf, et al.) are such that the

invention as a whole would have been anticipated when the invention was made to those of ordinary skill in the art.

PRIOR ART

1. U.S. Patent 6,122,058 (Van Der Werf)

GROUPING OF CLAIMS

With regard to the rejection of Claims 1, 2, 9, and 10 under 35 U.S.C. § 102, the claims stand or fall together.

ARGUMENT

- I. Whether under 35 U.S.C. § 102(b), the differences between the invention of Claims 1, 2, 9 and 10 and U.S. Patent 6,122,058 (Van Der Werf) are such that the invention as a whole would have been anticipated when the invention was made to those of ordinary skill in the art.

Van Der Werf fails to anticipate every element of Appellants' Claim 1, either explicitly or inherently.

Van Der Werf fails to recite or suggest a detector for detecting an intensity of light reflected off the surface to be inspected. Rather, Van Der Werf recites an interferometer which measures variations in the refractive index between a measuring beam and a laser beam. (See, e.g., Col. 17, lines 30-60) In addition, Van Der Werf requires two detectors 140 and 141 to measure refractive index variations.

The August 24, 2004 Final Office Action argues that although Van Der Werf fails to explicitly recite detecting an intensity of the light, it is inherent to the operation of a

detector in interferometry. The Office Action argues:
"[detector light intensity detection] is key in determining whether there is constructive interference... or destructive interference..." In response, Appellants respectfully note that a missing element is inherently present in a reference only if that element necessarily follows from what has been expressly described, and would be so recognized by one of skill in the art (as opposed to the examiner's expectation). Mere possibilities or even probabilities are not enough; necessity recognized by those of skill in the art is required.¹ The M.P.E.P. echoes this case law.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.

M.P.E.P. § 2112 (emphasis in original) (citations omitted).

Further, the following is also emphasized:

In relying upon the theory or inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teaching of the applied prior art.

M.P.E.P. § 2112 (emphasis in original) (citations omitted).

¹ The Federal Circuit has clearly set out the standard for inherency in, e.g., Continental Can Co. v. Monsanto Co., 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991) (emphasis added):

To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill. In re Oelrich, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981) (quoting Hansberg v. Kemmer, 40 U.S.P.Q. 665, 667 (C.C.P.A. 1939)) provides: "Inherency, however may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient."

This citation is also set out in M.P.E.P. § 2131.01(d).

N:\UserPublic\WXA\Amendments\2005 Amendments\NL000630.brief.doc

It is well established that a recited element or step is inherently present in a prior art reference only if that element is necessarily present or necessarily performed in that reference, and further that its presence or performance would be recognized by one of ordinary skill in the art from what has been expressly described. Second, the Office Action must provide objective evidence or cogent technical reasoning to support a contention of inherency.²

Simply because, as the Office Action alleges, Van Der Werf recites interferometry, this does not necessarily mean the detectors detect an intensity of light. Rather, Van Der Werf only recites measuring variations in the refractive index between a measuring beam and a laser beam. (See, e.g., Col. 17, lines 30-60) Interferometry can be any measurement of a change in optical characteristics of laser beam reflected from the etched surface. The detectors of Van Der Werf would then only necessarily detect the refractive index of the beam they receive. Thus Appellants respectfully traverse the inherency argument as well as the § 102 rejection of Claim 1 for at least the above reasons.

Claim 9 recites a method substantially corresponding to the device of Claim 1 and is believed patentable for at least the same reasons.

Claims 2 and 10 depend from one or another of the

² "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex Parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).
N:\UserPublic\WX\Amendments\2005 Amendments\NL000630.brief.doc

independent claims discussed above and are believed patentable for at least the same reasons. In addition, Appellants respectfully believe Claims 2 and 10 to be independently patentable and request separate consideration of each claim.

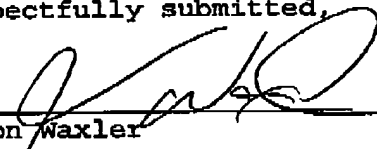
The August 24, 2004 Final Office Action argues that the Van Der Werf apparatus is capable of measuring an intensity of light (emphasis added). However, § 102 requires a prior art reference to recite all elements of a claim, either explicitly or impliedly, to vitiate a proper anticipation rejection (see, e.g., MPEP § 706.02). Since Van Der Werf fails to recite or suggest a , Appellants believe Claim 1 cannot be anticipated by a correct § 102 rejection.

CONCLUSION

For all of the above reasons, it is respectfully submitted that the final rejection of Claims 1, 2, 9, and 10 is in error. Accordingly, reversal of the final rejection of each of these claims is respectfully solicited.

This brief is being filed in triplicate.

Respectfully submitted,

By 
Aaron Waxler
Reg. 48,027
Attorney
(914) 333-9608

APPENDIX

1. A device for the inspection of surfaces (10) of one or more semiconductors (14), comprising:

at least one laser light source (1);

a detector (28) for detecting an intensity of light (13) that is reflected by the surface (10) to be inspected; and

at least one mode filter (15; 15.1) between the surface (10) and the detector (28).

2. A device according to claim 1, wherein the mode filter (15; 15.1) suppresses a mode in the reflected light (13) that corresponds to a mode of the laser light source (1).

3. A device according to claim 1, wherein the mode filter comprises a beam splitter (21) which splits a light beam (13) into at least two sub-beams (13.2; 13.3) that interfere with one another.

4. A device according to claim 3, wherein the mode filter includes a device (22) for mode-selective phase shifting and one of the sub-beams (13.3) traverses the device (22) for mode-selective phase shifting.

5. A device according to claim 4, wherein the device (22) effects a phase shift of a mode through 180° overall, together

N:\UserPublic\WXA\Amendments\2005 Amendments\NL000630.brief.doc

with a difference in path length, so that the sub-beams (13.2; 13.3) interfere destructively in respect of this mode.

6. A device according to claim 5, wherein the device (22) includes a lens system (26; 27) that operates on a Guoy phase system basis so as to effect the phase shift through 180° .

7-8 (Cancelled)

9. A method for the inspection of a surface of one or more semiconductors, comprising the steps of:

irradiating said surface by means of at least one laser light source; and

detecting an intensity of light that is reflected by the surface to be inspected in at least one detector, wherein the laser light source emits light of a defined mode and that light that is reflected by the surface is guided through a mode filter.

10. A method according to claim 9, wherein the mode filter suppresses the mode of the laser light source and no signal is detected where reflection does not affect the mode.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Atty. Docket

RECEIVED
CENTRAL FAX CENTER

ROBERT F. HENDRIKS ET AL

NL 000630

JAN 17 2005

Serial No.: 09/989,654

Art Unit: 2877

Filed: November 19, 2001

Examiner: M. LYONS

Title: INSPECTION OF SURFACES

Commissioner for Patents
Alexandria, VA 22313-1450APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

Sir:

Appellants present their brief on appeal as follows:

REAL PARTY OF INTEREST

The real party of interest is the assignee, Koninklijke Philips Electronics N.V., and not the parties named in the above caption.

RELATED APPEALS AND INTERFERENCES

With regard to identifying by number and filing date all other appeals or interferences known to appellants which will directly effect or be directly affected by or have a bearing on the Boards' decision in this appeal, Appellants are not aware of any such appeals or interferences.

STATUS OF THE CLAIMS

Claims 1, 2, 9, and 10 stand rejected and are appealed and Claims 3-6 stand objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

STATUS OF AMENDMENTS

An amendment after final rejection was presented subsequent to the final rejection on October 11, 2004 which was considered not persuasive according to the October 28, 2004 Advisory Action.

SUMMARY OF THE INVENTION

The present invention is directed to a device for the inspection of surfaces with a laser light source (1) and a detector for detecting an intensity of light (13) that is reflected from the surface (10) to be inspected. The device also includes at least one mode filter (15) between the surface (10) and the detector (28).

THE ISSUES

- I. Whether under 35 U.S.C. § 102(b), the differences between the invention of Claims 1, 2, 9, and 10 and U.S. Patent 6,122,058 (Van Der Werf, et al.) are such that the

invention as a whole would have been anticipated when the invention was made to those of ordinary skill in the art.

PRIOR ART

1. U.S. Patent 6,122,058 (Van Der Werf)

GROUPING OF CLAIMS

With regard to the rejection of Claims 1, 2, 9, and 10 under 35 U.S.C. § 102, the claims stand or fall together.

ARGUMENT

- I. Whether under 35 U.S.C. § 102(b), the differences between the invention of Claims 1, 2, 9 and 10 and U.S. Patent 6,122,058 (Van Der Werf) are such that the invention as a whole would have been anticipated when the invention was made to those of ordinary skill in the art.

Van Der Werf fails to anticipate every element of Appellants' Claim 1, either explicitly or inherently.

Van Der Werf fails to recite or suggest a detector for detecting an intensity of light reflected off the surface to be inspected. Rather, Van Der Werf recites an interferometer which measures variations in the refractive index between a measuring beam and a laser beam. (See, e.g., Col. 17, lines 30-60) In addition, Van Der Werf requires two detectors 140 and 141 to measure refractive index variations.

The August 24, 2004 Final Office Action argues that although Van Der Werf fails to explicitly recite detecting an intensity of the light, it is inherent to the operation of a

detector in interferometry. The Office Action argues:
"[detector light intensity detection] is key in determining whether there is constructive interference... or destructive interference..." In response, Appellants respectfully note that a missing element is inherently present in a reference only if that element necessarily follows from what has been expressly described, and would be so recognized by one of skill in the art (as opposed to the examiner's expectation). Mere possibilities or even probabilities are not enough; necessity recognized by those of skill in the art is required.¹ The M.P.E.P. echoes this case law.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.

M.P.E.P. § 2112 (emphasis in original) (citations omitted).

Further, the following is also emphasized:

In relying upon the theory or inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teaching of the applied prior art.

M.P.E.P. § 2112 (emphasis in original) (citations omitted).

¹ The Federal Circuit has clearly set out the standard for inherency in, e.g., *Continental Can Co. v. Monsanto Co.*, 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991) (emphasis added):

To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill. In *re Oelrich*, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981) (quoting *Hansgirk v. Kemmer*, 40 U.S.P.Q. 665, 667 (C.C.P.A. 1939)) provides: "Inherency, however may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient."

This citation is also set out in M.P.E.P. § 2131.01(d).

N:\UserPublic\WX\Amendments\2005 Amendments\NL000630.brief.doc

It is well established that a recited element or step is inherently present in a prior art reference only if that element is necessarily present or necessarily performed in that reference, and further that its presence or performance would be recognized by one of ordinary skill in the art from what has been expressly described. Second, the Office Action must provide objective evidence or cogent technical reasoning to support a contention of inherency.²

Simply because, as the Office Action alleges, Van Der Werf recites interferometry, this does not necessarily mean the detectors detect an intensity of light. Rather, Van Der Werf only recites measuring variations in the refractive index between a measuring beam and a laser beam. (See, e.g., Col. 17, lines 30-60) Interferometry can be any measurement of a change in optical characteristics of laser beam reflected from the etched surface. The detectors of Van Der Werf would then only necessarily detect the refractive index of the beam they receive. Thus Appellants respectfully traverse the inherency argument as well as the § 102 rejection of Claim 1 for at least the above reasons.

Claim 9 recites a method substantially corresponding to the device of Claim 1 and is believed patentable for at least the same reasons.

Claims 2 and 10 depend from one or another of the

² "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex Parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).
N:\UserPublic\WX\Amendments\2005 Amendments\NL000630.brief.doc

independent claims discussed above and are believed patentable for at least the same reasons. In addition, Appellants respectfully believe Claims 2 and 10 to be independently patentable and request separate consideration of each claim.

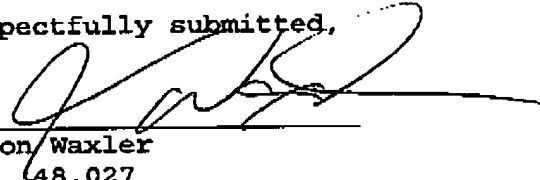
The August 24, 2004 Final Office Action argues that the Van Der Werf apparatus is capable of measuring an intensity of light (emphasis added). However, § 102 requires a prior art reference to recite all elements of a claim, either explicitly or impliedly, to vitiate a proper anticipation rejection (see, e.g., MPEP § 706.02). Since Van Der Werf fails to recite or suggest a , Appellants believe Claim 1 cannot be anticipated by a correct § 102 rejection.

CONCLUSION

For all of the above reasons, it is respectfully submitted that the final rejection of Claims 1, 2, 9, and 10 is in error. Accordingly, reversal of the final rejection of each of these claims is respectfully solicited.

This brief is being filed in triplicate.

Respectfully submitted,

By 
Aaron Waxler
Reg. 48,027
Attorney
(914) 333-9608

APPENDIX

1. A device for the inspection of surfaces (10) of one or more semiconductors (14), comprising:

at least one laser light source (1);

a detector (28) for detecting an intensity of light (13) that is reflected by the surface (10) to be inspected; and

at least one mode filter (15; 15.1) between the surface (10) and the detector (28).

2. A device according to claim 1, wherein the mode filter (15; 15.1) suppresses a mode in the reflected light (13) that corresponds to a mode of the laser light source (1).

3. A device according to claim 1, wherein the mode filter comprises a beam splitter (21) which splits a light beam (13) into at least two sub-beams (13.2; 13.3) that interfere with one another.

4. A device according to claim 3, wherein the mode filter includes a device (22) for mode-selective phase shifting and one of the sub-beams (13.3) traverses the device (22) for mode-selective phase shifting.

5. A device according to claim 4, wherein the device (22) effects a phase shift of a mode through 180° overall, together

N:\UserPublic\W\Amendments\2005 Amendments\NL000630.brief.doc

8

with a difference in path length, so that the sub-beams (13.2; 13.3) interfere destructively in respect of this mode.

6. A device according to claim 5, wherein the device (22) includes a lens system (26; 27) that operates on a Guoy phase system basis so as to effect the phase shift through 180° .

7-8 (Cancelled)

9. A method for the inspection of a surface of one or more semiconductors, comprising the steps of:

irradiating said surface by means of at least one laser light source; and

detecting an intensity of light that is reflected by the surface to be inspected in at least one detector, wherein the laser light source emits light of a defined mode and that light that is reflected by the surface is guided through a mode filter.

10. A method according to claim 9, wherein the mode filter suppresses the mode of the laser light source and no signal is detected where reflection does not affect the mode.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED
CENTRAL FAX CENTER

In re Application of

Atty. Docket

JAN 17 2005

ROBERT F. HENDRIKS ET AL

NL 000630

Serial No.: 09/989,654

Art Unit: 2877

Filed: November 19, 2001

Examiner: M. LYONS

Title: INSPECTION OF SURFACES

Commissioner for Patents
Alexandria, VA 22313-1450APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

Sir:

Appellants present their brief on appeal as follows:

REAL PARTY OF INTEREST

The real party of interest is the assignee, Koninklijke Philips Electronics N.V., and not the parties named in the above caption.

RELATED APPEALS AND INTERFERENCES

With regard to identifying by number and filing date all other appeals or interferences known to appellants which will directly effect or be directly affected by or have a bearing on the Boards' decision in this appeal, Appellants are not aware of any such appeals or interferences.

STATUS OF THE CLAIMS

Claims 1, 2, 9, and 10 stand rejected and are appealed and Claims 3-6 stand objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

STATUS OF AMENDMENTS

An amendment after final rejection was presented subsequent to the final rejection on October 11, 2004 which was considered not persuasive according to the October 28, 2004 Advisory Action.

SUMMARY OF THE INVENTION

The present invention is directed to a device for the inspection of surfaces with a laser light source (1) and a detector for detecting an intensity of light (13) that is reflected from the surface (10) to be inspected. The device also includes at least one mode filter (15) between the surface (10) and the detector (28).

THE ISSUES

- I. Whether under 35 U.S.C. § 102(b), the differences between the invention of Claims 1, 2, 9, and 10 and U.S. Patent 6,122,058 (Van Der Werf, et al.) are such that the

invention as a whole would have been anticipated when the invention was made to those of ordinary skill in the art.

PRIOR ART

1. U.S. Patent 6,122,058 (Van Der Werf)

GROUPING OF CLAIMS

With regard to the rejection of Claims 1, 2, 9, and 10 under 35 U.S.C. § 102, the claims stand or fall together.

ARGUMENT

- I. Whether under 35 U.S.C. § 102(b), the differences between the invention of Claims 1, 2, 9 and 10 and U.S. Patent 6,122,058 (Van Der Werf) are such that the invention as a whole would have been anticipated when the invention was made to those of ordinary skill in the art.

Van Der Werf fails to anticipate every element of Appellants' Claim 1, either explicitly or inherently.

Van Der Werf fails to recite or suggest a detector for detecting an intensity of light reflected off the surface to be inspected. Rather, Van Der Werf recites an interferometer which measures variations in the refractive index between a measuring beam and a laser beam. (See, e.g., Col. 17, lines 30-60) In addition, Van Der Werf requires two detectors 140 and 141 to measure refractive index variations.

The August 24, 2004 Final Office Action argues that although Van Der Werf fails to explicitly recite detecting an intensity of the light, it is inherent to the operation of a

detector in interferometry. The Office Action argues:
"[detector light intensity detection] is key in determining whether there is constructive interference... or destructive interference..." In response, Appellants respectfully note that a missing element is inherently present in a reference only if that element necessarily follows from what has been expressly described, and would be so recognized by one of skill in the art (as opposed to the examiner's expectation). Mere possibilities or even probabilities are not enough; necessity recognized by those of skill in the art is required.¹ The M.P.E.P. echoes this case law.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.

M.P.E.P. § 2112 (emphasis in original) (citations omitted).

Further, the following is also emphasized:

In relying upon the theory or inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teaching of the applied prior art.

M.P.E.P. § 2112 (emphasis in original) (citations omitted).

¹ The Federal Circuit has clearly set out the standard for inherency in, e.g., Continental Can Co. v. Monsanto Co., 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991) (emphasis added):

To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill. In re Oelrichs, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981) (quoting Hansgirr v. Kemmer, 40 U.S.P.Q. 665, 667 (C.C.P.A. 1939)) provides: "Inherency, however may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient."

This citation is also set out in M.P.E.P. § 2131.01(d).

N:\UserPublic\WXA\Amendments\2005 Amendments\NL000630.brief.doc

It is well established that a recited element or step is inherently present in a prior art reference only if that element is necessarily present or necessarily performed in that reference, and further that its presence or performance would be recognized by one of ordinary skill in the art from what has been expressly described. Second, the Office Action must provide objective evidence or cogent technical reasoning to support a contention of inherency.²

Simply because, as the Office Action alleges, Van Der Werf recites interferometry, this does not necessarily mean the detectors detect an intensity of light. Rather, Van Der Werf only recites measuring variations in the refractive index between a measuring beam and a laser beam. (See, e.g., Col. 17, lines 30-60) Interferometry can be any measurement of a change in optical characteristics of laser beam reflected from the etched surface. The detectors of Van Der Werf would then only necessarily detect the refractive index of the beam they receive. Thus Appellants respectfully traverse the inherency argument as well as the § 102 rejection of Claim 1 for at least the above reasons.

Claim 9 recites a method substantially corresponding to the device of Claim 1 and is believed patentable for at least the same reasons.

Claims 2 and 10 depend from one or another of the

² "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex Parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).
N:\UserPublic\W\X\Amendments\2005 Amendments\NL000630.brief.doc

independent claims discussed above and are believed patentable for at least the same reasons. In addition, Appellants respectfully believe Claims 2 and 10 to be independently patentable and request separate consideration of each claim.

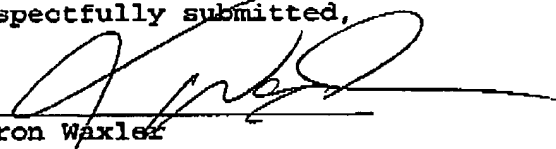
The August 24, 2004 Final Office Action argues that the Van Der Werf apparatus is capable of measuring an intensity of light (emphasis added). However, § 102 requires a prior art reference to recite all elements of a claim, either explicitly or impliedly, to vitiate a proper anticipation rejection (see, e.g., MPEP § 706.02). Since Van Der Werf fails to recite or suggest a , Appellants believe Claim 1 cannot be anticipated by a correct § 102 rejection.

CONCLUSION

For all of the above reasons, it is respectfully submitted that the final rejection of Claims 1, 2, 9, and 10 is in error. Accordingly, reversal of the final rejection of each of these claims is respectfully solicited.

This brief is being filed in triplicate.

Respectfully submitted,

By 
Aaron Waxler
Reg. 48,027
Attorney
(914) 333-9608

APPENDIX

1. A device for the inspection of surfaces (10) of one or more semiconductors (14), comprising:

at least one laser light source (1);

a detector (28) for detecting an intensity of light (13) that is reflected by the surface (10) to be inspected; and

at least one mode filter (15; 15.1) between the surface (10) and the detector (28).

2. A device according to claim 1, wherein the mode filter (15; 15.1) suppresses a mode in the reflected light (13) that corresponds to a mode of the laser light source (1).

3. A device according to claim 1, wherein the mode filter comprises a beam splitter (21) which splits a light beam (13) into at least two sub-beams (13.2; 13.3) that interfere with one another.

4. A device according to claim 3, wherein the mode filter includes a device (22) for mode-selective phase shifting and one of the sub-beams (13.3) traverses the device (22) for mode-selective phase shifting.

5. A device according to claim 4, wherein the device (22) effects a phase shift of a mode through 180° overall, together

N:\UserPublic\WX\Amendments\2005 Amendments\NL000630.brief.doc

with a difference in path length, so that the sub-beams (13.2; 13.3) interfere destructively in respect of this mode.

6. A device according to claim 5, wherein the device (22) includes a lens system (26; 27) that operates on a Guoy phase system basis so as to effect the phase shift through 180° .

7-8 (Cancelled)

9. A method for the inspection of a surface of one or more semiconductors, comprising the steps of:

irradiating said surface by means of at least one laser light source; and

detecting an intensity of light that is reflected by the surface to be inspected in at least one detector, wherein the laser light source emits light of a defined mode and that light that is reflected by the surface is guided through a mode filter.

10. A method according to claim 9, wherein the mode filter suppresses the mode of the laser light source and no signal is detected where reflection does not affect the mode.